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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

STEPHEN D. MARSH, as Executor, etc.,
et al.,

Petitioners and Respondents,

v.

MICHAEL A. WEISS, Individually and as
Executor, etc.,

Objectors and Appellants.

G052574

(Super. Ct. No. 30-2009-00331535)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Kim R.
Hubbard, Judge. Order affirmed.

Michael A. Weiss, in pro. per.; Law Office of Michael A. Weiss and
Michael A. Weiss for Objectors and Appellants.

Law Offices of Steven M. Magro and Steven M. Magro for Petitioners and
Respondents.

Michael A. Weiss, appearing individually and as the executor for the Estate of Jane L. Marsh, deceased (appellants), appeal from an order granting an ex parte application to carry out the sale of real property held by the Estate of Monroe F. Marsh, deceased. (Prob. Code, §§ 1300, subd. (c), 1310, subd. (b).)¹ Stephen D. Marsh and Damon Marsh, executors of the estate (respondents) dispute appellants' claims and have also filed a motion to dismiss the appeal and a request for judicial notice in connection with the motion. Respondents contend the sale of the property during the pendency of this appeal renders it moot. We deny the motion. But, as discussed in the companion appeal (*Estate of Monroe F. Marsh* (Nov. 7, 2016, G052208 [nonpub. opn.], at pp. 5-7), we conclude the order must be affirmed because appellants lack standing to challenge the ruling.

FACTS

The trial court granted respondents' petition to confirm a sale of real property held by the estate. Appellants appealed that ruling. (§ 1300, subd. (a).) The appeal from that order triggered an automatic stay, precluding respondents from consummating the sale. (§ 1310, subd. (a).) To avoid losing a favorable purchase offer, respondents filed the ex parte application to allow them to complete the sale during the pendency of the appeal. (§ 1310, subd. (b).) The trial court granted the request. Respondents completed the sale of the real property. The current appeal is taken from the ruling on the ex parte application.

DISCUSSION

In the companion appeal (*Estate of Monroe F. Marsh, supra*, G052208), we denied respondents' motion to dismiss the appeal from the order confirming the sale of the estate's real property to third parties and the related request for judicial notice of documents supporting the motion. We held their sale of the property did not render the

¹ Unless otherwise indicated, all further statutory references are to the Probate Code.

appeal moot. However, we affirmed the order confirming the sale of the estate's property because appellants lacked standing to challenge the ruling. In their brief opposing the current appeal, respondents assert the same contention.

In the companion appeal, we noted that to have standing to appeal a party must "hav[e] an interest recognized by law in the subject matter of the judgment, which interest is injuriously affected by the judgment" (*Estate of Colton* (1912) 164 Cal. 1, 5; Code Civ. Proc., § 902 [only a "party aggrieved may appeal"].) The standing requirement is jurisdictional and the absence of standing constitutes a defect that cannot be waived. (*Estate of Bartsch* (2011) 193 Cal.App.4th 885, 890.) Since appellants lacked standing to challenge the order confirming the sale of the real property, they can have no greater interest in objecting to an order granting respondents relief from the stay triggered by their filing the prior appeal.

DISPOSITION

Respondents' motion to dismiss the appeal and request for judicial notice are denied. The order granting respondents ex parte application to proceed with the sale of the estate's real property is affirmed. Respondents shall recover their costs on appeal.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.